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Rules, Regulations, Orders

TITLE 7—AGRICULTURE AGRICULTURAL ADJUSTMENT ADMINISTRATION

[Form 38—Tobacco 47]

PART 714—REGULATIONS PERTAINING TO REFUND OF PENALTY ERRONEOUSLY, ILLEGALLY, OR WRONGFULLY COLLECTED BY THE SECRETARY OF AGRICULTURE WITH RESPECT TO THE MARKETING OF TO- BACCO *

By virtue of the authority vested in the Secretary of Agriculture by Section 372 (c) of Title III of the Agricultural Adjustment Act of 1938 (Public Law No. 430, 75th Congress, approved February 16, 1938, as amended), I, H. A. Wallace, Secretary of Agriculture, do hereby make, prescribe, publish, and give public notice of the following regulations pertaining to the refund of penalty erroneously, illegally, or wrongfully collected by the Secretary of Agriculture with respect to the marketing of tobacco, such regulations to be in force and effect until amended, or superseded, by regulations hereafter made by the Secretary of Agriculture under said act.

Done at Washington, D. C., this 5th day of November, 1938. Witness my hand and seal of the Department of Agriculture,

[SEAL]

H. A. WALLACE,
Secretary of Agriculture.

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* Sections 714.1 to 714.13 issued under the authority contained in Section 372 (c), 52 Stat. 204.

The source of Sections 714.1 to 714.13 is Form 38—Tobacco 47, A. A. A., November 5, 1938.

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Sec. 714.1 *Who may claim.*—Claim for refund of any sum of money erroneously, illegally, or wrongfully collected as penalty with respect to marketing of tobacco may be made by:

(a) Any person who was entitled to share in the price paid to the producer with respect to any sale from which a deduction was made, pursuant to Section 314 of the act, and who bore the burden of such deduction; or

(b) Any person who paid such penalty on any sale and who did not deduct from the price paid to the producer in connection with such sale the amount thereof pursuant to Section 314 of the act.

If under either paragraphs (a) or (b) above more than one person is entitled to file a claim with respect to a sale, then a joint claim may be filed by all such persons.* #

Sec. 714.2 *Manner of filing.*—Claim for refund shall be made on Form 38—Tobacco 48 and shall be filed in the county office.* #

Sec. 714.3 *Time of filing.*—Any such claim must be filed within one year after payment to the Secretary of the penalty with respect to which claim is made.

The date the penalty is received by the Office of the Comptroller of the Agricultural Adjustment Administration, United States Department of Agriculture, shall constitute the date when payment of such penalty was made to the Secretary.* #

Sec. 714.4 *Statement of claim.*—Full and complete information shall be given on Form 38—Tobacco 48 concerning the sale of tobacco with respect to which claim is made; the names, addresses, and proportionate shares in the amount claimed, of all persons who had an interest in the purchase price paid for the tobacco and who bore the burden of such

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penalty; and the reasons why such penalty is claimed to have been erroneously, illegally, or wrongfully collected. There should be attached to the claim all pertinent documents, such as warehouse bill, marketing card, etc.* #

Sec. 714.5 Execution of claim.—The claim (Form 38—Tobacco 48) shall be executed in the same manner as is provided in ACP-16, "Instructions on Signatures and Authorizations," for the execution of applications for payment or related papers under the Agricultural Conservation Program.* #

Sec. 714.6 Certificate of operator.—Where the claim is made by a producer other than an operator, the Certificate of Operator must be executed by the person who was the operator of the farm at the time of the sale of the tobacco with respect to which claim was made.* #

Sec. 714.7 Designation of trustee and declaration of trust.—Where there is more than one claimant and all the claimants desire to appoint a trustee to receive and disburse any payment to be made to them with respect to the claim,

such trustee shall be appointed in the Designation of Trustee contained in paragraph "(4)" Form 38—Tobacco 48 and in the event of such appointment, the person so designated as trustee shall execute the Declaration of Trust provided on said form.* #

Sec. 714.8 Certification by county committee.—Immediately upon receipt of a claim (Form 38—Tobacco 48), the county committee shall record on the face thereof the date of its receipt. If it determines on the basis of information available to it that the data and representations on the claim are correct, one of its members shall on behalf of the committee so certify in the place provided therefor. The committee shall, in any event, forthwith transmit the claim to the Tobacco Section, Agricultural Adjustment Administration, Washington, D. C.* #

Sec. 714.9 Examination of claim.—The Tobacco Section shall examine the claim (Form 38—Tobacco 48) and make such investigation as may be necessary. After consideration of the claim, the Chief of such section, or someone designated by him in writing, shall endorse thereon the amount recommended for payment stating the reasons therefor and shall submit the claim to the Solicitor for legal approval. Upon approval of the claim by the Solicitor, or someone designated by him in writing, the claim shall be transmitted to the Comptroller for his approval. If the claim is not recommended or approved for payment, the Chief of the Tobacco Section shall notify the claimant that his claim has been rejected.* #

Sec. 714.10 Certification by Comptroller.—The Comptroller, for and on behalf of the Secretary, shall certify on "Public Voucher for Refunds of Marketing Penalties" (Form 38—A. A. A.—11) and on "Public Voucher for Refunds of Marketing Penalties—Continuation Sheet" (Form 38—A. A. A.—10) to the Secretary of the Treasury of the United States for payment all such claims for refund as have been approved.* #

Sec. 714.11 Instructions and forms.—The Administrator of the Agricultural Adjustment Administration, United States Department of Agriculture, shall cause to be prepared and issued with his approval such instructions and forms as may be required to carry out these regulations.* #

Sec. 714.12 Gender and plural meaning of terms.—Any term used in the masculine or in the singular shall also be considered as applied in the feminine or neuter gender, or in the plural or singular person, wherever the context or application of such terms shall require.* #

Sec. 714.13 Definitions.—As used in these regulations and in all forms and documents in connection therewith, unless the context of the subject matter otherwise requires:

(a) *Act* means the Agricultural Adjustment Act of 1938 (52 Stat. 31) and any amendments thereto,

(b) *Secretary* means the Secretary of Agriculture of the United States.

(c) *Regulations* means those regulations pertaining to refund of penalty, erroneously, illegally or wrongfully collected by the Secretary of Agriculture with respect to the marketing of tobacco.

(d) *County committee* means the county committee utilized under the act.

(e) *County office* means the office of the county committee.

(f) *Comptroller* means the Comptroller, or Acting Comptroller of the Agricultural Adjustment Administration, United States Department of Agriculture.

(g) *Farm* means the farm for which the marketing quota was established.

(h) *Operator* means the producer who is in charge of the supervision and the conduct of the farming operations on the entire farm.

(i) *Producer* means a person who, as owner, landlord, tenant, sharecropper, or laborer was entitled under the provisions of his agreement relating to the production of tobacco to share in the tobacco marketed from the farm.

(j) *Farm marketing quota or quota* means a tobacco marketing quota established for a farm under Title III of the act.

(k) *Sale* means the disposition subject to penalty of one or more lots of tobacco covered by one memorandum of sale.

(l) *Memorandum of sale* means the form or forms prescribed by the Secretary and used in connection with the marketing of tobacco for the purpose of determining whether or not such marketing was subject to penalty.

(m) *Claimant* means any person who makes claim on Form No. 38—Tobacco 48, in accordance with these regulations.

(n) *Claim* means a request for refund of penalty on Form No. 38—Tobacco 48.

(o) *Penalty* means an amount of money collected by the Secretary from any person with respect to the marketing of tobacco.

(p) *Person* means an individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or any agency of a State, or of the Federal Government.

(q) *Tobacco section* means the Tobacco Section, Agricultural Adjustment Administration, United States Department of Agriculture, Washington, D. C.* #

[F. R. Doc. 38-3352; Filed, November 5, 1938; 12:34 p. m.]

[Form 38—Tobacco 38]

PROCEDURE FOR THE DETERMINATION OF FIRE-CURED AND DARK AIR-CURED TOBACCO FARM MARKETING QUOTAS FOR 1938

PART I—GENERAL

SECTION 1. Definitions.—As used in this procedure and in all instructions, forms, and documents in connection therewith, the words and phrases defined in this section shall have the

meanings herein assigned to them, unless the context or subject-matter otherwise requires:

(a) *Act* means the Agricultural Adjustment Act of 1938 and any amendments thereto.

(b) *Base 1938 production* means the number of pounds obtained by multiplying the farm yield by 150 percent of the 1938 tobacco acreage.

(c) *Fire-cured and dark air-cured tobacco* means tobacco classified in Service and Regulatory Announcement Numbered 118 of the Bureau of Agricultural Economics of the United States Department of Agriculture, as types 21, 22, 23, 24, 35, 36, and 37.

(d) *Dark tobacco quota procedure* means this Form 38—Tobacco 38, "Procedure for the Determination of Fire-Cured and Dark Air-Cured Tobacco Farm Marketing Quotas for 1938".

(e) *Cropland* means farm land tilled annually or in regular rotation, excluding commercial orchards.

(f) *Farm* means all adjacent or nearby farm land under the same ownership which is operated by one person, including also:

(1) Any other adjacent or nearby farm land operated by the same person (as part of the same unit with respect to the rotation of crops and with work-stock, farm machinery, and labor substantially separate from that for any other land) the inclusion of which is requested or agreed to, within the time and in the manner specified by the Agricultural Adjustment Administration, by the operator and all the owners who are entitled to share in the proceeds of the crop on any of the land to be included in the farm, which request and agreement shall be applicable to the designation of the land included in such farm both under the 1938 Agricultural Conservation Program and under the Dark Tobacco Quota Procedure;

(ii) Any field-rented tract (whether operated by the same or another person) which, together with any other land included in the farm, constitutes a unit with respect to the rotation of crops: *Provided*, That land not under the same ownership shall be included in the same farm only if the county committee determines that all of such land is customarily regarded in the community as constituting one farm. A farm shall be regarded as located in the county or the local administrative area within the county, as the case may be, in which the principal dwelling is situated, or if there is no dwelling thereon, it shall be regarded as located in the county or local administrative area, as the case may be, in which the major portion of the farm is located.

(g) *Farm marketing quota* means a fire-cured and dark air-cured tobacco marketing quota established for a farm under section 313 of the Agricultural Adjustment Act of 1938.

(h) *Farm worker* means a person over fourteen years of age regularly engaged in farm work on the farm.

(i) *Local committee* means the county and community committee utilized under the Act. "County Committee" or "Community Committee" shall have corresponding meanings in the connection in which they are used.

(j) *New farm* means a farm on which tobacco is produced in the year 1938 and on which tobacco was not produced in any of the years 1934, 1935, 1936, and 1937.

(k) *New farm reserve* means that amount of the national marketing quota of 145,000,000 pounds apportioned by the Secretary of Agriculture, pursuant to section 313 (c) of the Act, for allotment of marketing quotas to new farms.

(l) *Old farm* means a farm on which tobacco is produced in the year 1938 and on which tobacco was also produced in one or more of the years 1934, 1935, 1936, and 1937.

(m) *Operator* means the person who, as owner, landlord, or tenant, is in charge of the supervision and the conduct of the farming operations on the entire farm.

(n) *Person* means an individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or any agency of a State or of the Federal Government. The term "person" shall include two or more persons having a joint or common interest.

(o) *State committee* means the group of persons designated within any State to assist in the administration in the State of the Act.

(p) *State quota or State marketing quota* means that amount of the national marketing quota of 145,000,000 pounds apportioned by the Secretary of Agriculture, pursuant to section 313 (a) of the Act, for allotment of marketing quotas to old farms in the State; and does not include the 2 percent addition thereto pursuant to section 315 (f) of the Act.

(q) *Three-year average* means the average tobacco production and diversion for the farm during the years 1935, 1936, and 1937.

(r) *Tobacco* means fire-cured and dark air-cured tobacco.

(s) *Dark tobacco* means fire-cured and dark air-cured tobacco.

Sec. 2. Gender and number of terms.—Any term used in the masculine gender or in the singular number shall also be construed or applied in the feminine or neuter gender, or in the plural person, wherever the context or application of such term so requires.

Sec. 3. Extent of calculations and rule of fractions.—(a) All percentages shall be calculated to the nearest whole percent. Fractions of more than five-tenths of one percent shall be rounded upward, and fractions of five-tenths of one percent or less shall be dropped. (b) All acreages shall be calculated to the nearest one-tenth of an acre. Fractions of more than five-hundredths of an acre shall be rounded upward, and fractions of five-hundredths of an acre or less shall be dropped. (c) Yields per acre, three-year averages, and marketing figures resulting from multiplication of

acreage by farm yield shall be calculated to the nearest ten pounds. Between intervals of ten, amounts of more than five pounds shall be rounded upward, and amounts of five pounds or less shall be dropped.

Sec. 4. Instructions and forms.—The Administrator of the Agricultural Adjustment Administration of the United States Department of Agriculture shall cause to be prepared and issued with his approval such instructions and such forms as may be necessary or expedient for carrying out this procedure for determining farm quotas.

Sec. 5. Applicability of procedure.—This Dark Tobacco Quota Procedure shall relate to and be effective for, the establishment of farm marketing quotas for fire-cured and dark air-cured tobacco for the marketing year beginning with the first day of October, 1938, and ending with the 30th day of September, 1939.

PART II—ESTABLISHMENT OF QUOTAS FOR OLD FARMS

SECTION 1. Determination of normal marketings for old farms.—The normal marketings for an old farm will be the normal past marketings computed pursuant to section 2 below, adjusted, if necessary, pursuant to section 3 below; *provided*, that the normal marketings shall in no event exceed the base 1938 production for the farm.

Sec. 2. Determination of normal past marketings.—(a) The normal past marketings for an old farm on which tobacco was produced in one of the three years 1935–37, shall be whichever of items (i), (ii), (iii), or (iv) below is the highest for the farm, plus any addition thereto which may be made pursuant to subsection (c) below.

- (i) The three-year average;
- (ii) 33⅓% of the total harvested and diverted tobacco acreage in the three years, 1935–37, multiplied by the farm yield;
- (iii) 40% of the total harvested and diverted tobacco acreage in the two years of the three years, 1935–37, in which such acreage was the highest, multiplied by the farm yield;
- (iv) 60% of the harvested and diverted tobacco acreage in that one of the three years, 1935–37, in which such acreage was the highest, multiplied by the farm yield.

(b) The normal past marketings for an old farm on which tobacco was produced in 1934, but was not produced in any of the three years 1935–37, shall be 50% of the harvested and diverted tobacco acreage for the farm for the year 1934, multiplied by the farm yield plus any addition thereto which may be made pursuant to subsection (c) below.

(c) The amount determined for the farm, pursuant to subsection (a) or (b) above, shall be increased, if, because of drought, flood, hail, other abnormal weather conditions, plant bed and other diseases, such amount is substantially less than the amount which otherwise

would be determined for the farm. The increase shall be in such an amount as the local and State committees find will cause the normal past marketing for the farm to equal the amount which would have been determined for the farm pursuant to subsection (a) or (b) above in the absence of such abnormal conditions of production.

SEC. 3. Adjustment of normal past marketings for production capacity.—(a) The normal past marketings determined for any farm shall be increased if the capacity of the farm for the production of tobacco as indicated by the land (taking into account the crop-rotation practices customarily carried out on the farm), labor, and equipment available for the production of tobacco on the farm in 1938, is substantially greater than the tobacco production capacity of other farms in the county having similar normal past marketings, and shall be decreased if the farm's capacity for tobacco production is substantially less than that of other farms in the county having similar normal past marketings.

(b) Any increase or decrease in the normal past marketings of a farm, pursuant to subsection (a) above, shall be in such amount as the local committee finds will cause the normal marketings for the farm (i. e., normal past marketings, as adjusted pursuant to this subsection) to reflect adequately the difference in the capacity of the farm for the production of tobacco as compared with the tobacco production capacity of other farms in the county having similar normal past marketings; *provided*, That—

(i) the amount of increase shall not exceed 25 percent of the normal past marketings;

(ii) the amount of decrease shall not exceed the smaller of (A) 25 percent of the normal past marketings, or (B) the amount by which the normal past marketings exceeds the smallest of the three-year average, 2400 pounds, or 85 percent of the base 1938 production; and

(iii) the sum of the increases for all farms in a county shall not exceed the sum of the decreases for all farms in the county.

(c) In appraising the land (taking into account the crop-rotation practices customarily carried out on the farm), labor, and equipment available for the production of tobacco for the purpose of determining the capacity of a farm for the production of tobacco, the local committee shall proceed in the following manner:

(i) **Land.**—The land available for the production of tobacco on the farm shall be determined by taking into consideration the total acreage of cropland in the farm, the crop-rotation practices customarily carried out on the farm, the 1938 acreage of tobacco on the farm, and the acreage of other soil-depleting crops normally grown on the farm.

(ii) **Labor.**—The labor available for the production of tobacco on the farm

in 1938 shall be determined by taking into consideration the number of farm workers, whether such workers had prior experience in growing tobacco and the extent to which they are required for work on the farm other than in connection with the production of tobacco.

(iii) **Equipment.**—Equipment available for the production of tobacco on the farm shall be determined by taking into consideration the acreage capacity of the tobacco-curing space available for the farm in 1938. Curing space shall include the total space available for curing tobacco in tobacco curing barns or in sheds, rooms, barn lofts, or other spaces suitable for curing tobacco, which are located on the farm and are in condition and available for the curing of tobacco for the farm in 1938. Curing space shall also include that part of a tobacco curing barn which is in condition for curing use in 1938 but is located on a different farm which is owned or operated by the same operator, and which is customarily used for curing tobacco grown on the farm; but in considering any such barn allowance shall be made for the fact that such barn serves more than one farm, and the capacity allowed for any farm shall not exceed the proportionate use of such barn by the farm, and the capacity for all farms shall not exceed the total capacity of such barn.

SEC. 4. Determination of farm yield, marketings, harvested acreage, diverted acreage and diversion.—(a) **Farm yield.**—The farm yield shall be the average yield per acre for the farm computed pursuant to paragraph (i), (ii), (iii) or (iv) below, adjusted, if necessary, pursuant to paragraph (v) below.

(i) If tobacco was produced on the farm in each of the three years, 1935-37, the average yield per acre shall be the simple average of the tobacco yields per acre for the farm for each of such years. The tobacco yield per acre for a farm for any year shall be computed by dividing the harvested acreage into the marketings for such year.

(ii) If tobacco was produced on the farm in two of the three years, 1935-37, the average yield per acre shall be the number of pounds obtained by multiplying the simple average of the tobacco yields per acre for the farm for each of such two years by that percentage which the county average tobacco yield for the three years, 1935-37, is of the county average yield for the two years in which tobacco was produced on the farm.

(iii) If tobacco was produced on the farm in only one of the three years 1935-37, the average yield per acre shall be the number of pounds obtained by multiplying the tobacco yield per acre for such year by that percentage which the county average yield for the three years, 1935-37, is of the county average yield for the year in which tobacco was produced on the farm.

(iv) If tobacco was produced on the farm in 1934, but not in any of the three years 1935-37, the average yield per acre

shall be the county average yield for the three years 1935-37.

(v) The local committee shall adjust the average yield per acre for any farm if it determines that such average yield is substantially lower or higher than a yield which reasonably could be expected from the farm. In making its determination the committee shall take into consideration the average yields per acre for other farms in the county which are similar with respect to type of soil, topography and production facilities and the effect of flood, drought, hail, other abnormal weather conditions, fire, plant-bred, and other diseases upon the extent of marketing of tobacco from the farm during any of the years used in computing the average yield per acre for the farm. Any adjustment pursuant to this paragraph shall be such as will result in a farm yield which the committee finds, upon consideration of such factors, could reasonably be expected to be obtained from the farm; *provided*, that in no event shall the weighted farm yields for all farms in the county exceed the weighted average yield per acre for all farms in the county. The weighted farm yield and the weighted average yield per acre for old farms on which tobacco was produced in one or more of the three years, 1935-37, shall be computed by multiplying the farm yield and the average yield per acre for the farm, respectively, by whichever of the following is the highest for the farm:

A. 33 1/3 percent of the total harvested and diverted tobacco acreage in the three years 1935-37.

B. 40 percent of the total harvested and diverted tobacco acreage in the two of the three years 1935-37 in which such acreage was the highest, or

C. 60 percent of the harvested and diverted tobacco acreage in that one of the three years, 1935-37, in which such acreage was the highest.

The weighted farm yield and the weighted average yield per acre for old farms on which tobacco was produced in 1934 but not in any of the three years, 1935-37, shall be computed by multiplying the farm yield and the average yield per acre for the farm, respectively, by 50 percent of the harvested and diverted acreage of tobacco for the farm for the year 1934.

(b) **Marketings.**—The marketings for any year shall be the number of pounds of tobacco marketed from the farm during such year. The total marketings for any year for all farms in a county shall not exceed the total number of pounds of tobacco produced in the county in such year. The marketings for any year, as reported by the operator, shall be adjusted by the local committee if it determines that the amount of such marketings as shown by the records submitted by the operator, or as estimated by him, is larger than the amount of tobacco which reasonably could have been marketed from the farm in such year. In making its determination, the

committee shall take into consideration the acreage planted to tobacco on the farm in such year, the yields obtained in such year on other farms in the same community which are similar with respect to soil, topography, and production facilities, the community average yield for such year, and the yield on the farm in years for which records acceptable to the committee are available. The adjusted marketings for any year shall be the amount of tobacco which the committee finds, upon consideration of such factors, could reasonably have been marketed from the farm in such year.

(c) *Harvested acreage.*—The harvested acreage for any year shall be the number of acres actually harvested on the farm. If the county records do not show the harvested acreage for any year, the acreage reported by the operator as having been harvested in such year shall be adjusted if the local committee determines that such reported acreage is larger than the number of acres which could reasonably have been grown in such year. In making its determination, the committee shall take into consideration the curing space available, the cropland, the acres of other crops grown on the farm and the labor on the farm in such year. The adjusted harvested acreage for any year shall be an acreage which the committee finds, upon consideration of such factors, could reasonably have been grown on the farm in such year.

(d) *Diverted acreage.*—The diverted acreage for any year will be the base acreage determined for the farm in connection with the agricultural adjustment or conservation program for such year, minus the harvested acreage for such year; provided, that (i) the diverted acreage for 1935 shall not exceed 20 percent of the base acreage for such year, (ii) the diverted acreage for 1936 or 1937 shall not exceed 30 percent of the base acreage for such year, and (iii) the diverted acreage for 1934 shall not exceed 25 percent of the base acreage for such year.

(e) *Diversion.*—Diversion for any year shall be the number of pounds obtained by multiplying the diverted acreage for such year by the farm yield.

(f) *Subdivided farm.*—If land operated as a single farm in 1934, 1935, 1936, or 1937 has been subdivided into two or more tracts, the base acreage, harvested acreage, and marketings of tobacco for the farm for such year shall be apportioned among the tracts in the proportion which the acres of cropland suitable for the production of tobacco on each such tract in such year bore to the total number of acres of cropland suitable for the production of tobacco on the entire farm in such year; provided, that if the local committee finds that such apportionment would not be equitable in view of the subsequent production on the farms which include such tracts, it shall make such other apportionment as it determines to be fair and equitable.

Sec. 5. Allotment of state marketing quota—Marketing quotas for old farms.—The State marketing quota will be allotted, and marketing quotas for old farms will be established, as follows:

(a) An amount will be reserved from the State marketing quota for the purpose of making adjustments as provided in subsections (f) and (h) of this section. The amount to be reserved will be determined by the Agricultural Adjustment Administration in an amount not to exceed 5 percent of the State marketing quota, but such amount shall in no event be less than the amount necessary for making the adjustments required in subsection (f) below.

(b) The Agricultural Adjustment Administration will determine the percentage which the State quota is of the normal marketings of all old farms in the State.

(c) A minimum allotment will be made to every old farm in the State for which there would be obtained, by taking the percentage determined pursuant to (b) above of the normal marketings for the farm, a number of pounds equal to or less than the smallest of (i) 2400 pounds, or (ii) the farm's three-year average, or (iii) 85 percent of the farm's base 1938 production. The minimum allotment for any such farm will be the smallest of (i) 2400 pounds, or (ii) the farm's three-year average, or (iii) 85 percent of the farm's base 1938 production, and such allotment, unless increased pursuant to subsection (h) shall constitute the farm marketing quota.

(d) The total of the normal marketings for all farms to which minimum allotments are so made will be deducted from the total of the normal marketings for all old farms in the State; and the total of such minimum allotments will be deducted from the State marketing quota.

(e) After such deductions, the balance of the normal marketings will be reduced to the amount of the balance of the State marketing quota. This reduction will be made by reducing the normal marketings for all old farms, to which a minimum allotment has not been made pursuant to subsection (c), by the percentage which the balance of the State marketing quota determined pursuant to subsection (d) is of the balance of the normal marketings. The amount of the normal marketings for each such old farm as so reduced will be allotted to the farm, and, unless increased pursuant to subsections (f), (g), or (h) of this section, shall constitute the farm marketing quota.

(f) If the amount allotted to any farm pursuant to (e) above is less than the minimum allotment which would have been established for the farm pursuant to (c) above, then the amount so allotted shall be increased by an amount sufficient to provide such a minimum. The total of all such increases for all old farms in the State will be deducted from the amount reserved pursuant to (a) above.

(g) There will be computed for each old farm in the State the difference by which the amount allotted pursuant to the foregoing subsections is less than the smaller of (i) 80 percent of the farm's three-year average, or (ii) 85 percent of the base 1938 production. The total of all such differences for all old farms in the State will be reduced to an amount equal to 2 percent of the State marketing quota. This reduction will be made by reducing the difference for each farm by the percentage which 2 percent of the State marketing quota is of the total of the differences for all farms. The amount of the farm's difference as so reduced will be added to the farm's allotment and the sum thereof will be the amount of the farm marketing quota unless further increased pursuant to subsection (h) below.

(h) The amount reserved pursuant to subsection (a), less the amount deducted therefrom pursuant to subsection (f), will be allocated by the State committee among the counties of the State upon the basis of (i) the relationship of the balance of the normal marketings (found under (d) above) for old farms in the county to the balance of the normal marketings for old farms in all counties in the State, and (ii) the relative needs of the counties for adjustments of the quotas established for old farms therein. The amount so allocated to a county shall be allotted upon the recommendation of the local committee among those old farms in the county whose marketing quotas, as compared with the marketing quotas for other similar farms in the county, are determined by the local committee to require adjustment in order to take into adequate account past marketings of tobacco, making due allowance for abnormal weather conditions, plant bed and other diseases; land, labor, and equipment available for the production of tobacco; crop-rotation practices; and the soil and other physical factors affecting the production of tobacco.

PART III—ESTABLISHMENT OF QUOTAS FOR NEW FARMS

SECTION 1. Allotment of new farm reserve—Marketing quotas for new farms.—The marketing quota for a new farm will be that percentage of the normal marketings for such farm which the new farm reserve is of total normal marketings for all new farms in the United States.

Sec. 2. Determination of normal marketings for new farms.—(a) The normal marketings for a new farm shall, unless adjusted pursuant to subsection (b) below, be 75 percent of the number of pounds obtained by multiplying the community average yield by whichever of the following is the smaller:

(i) The 1938 tobacco acreage for the farm;

(ii) The county average tobacco acreage for old farms.

The community average yield shall be the simple average of the farm yields for a representative sample of old farms in the community. A representative sample shall include 20 percent or more of the old farms in the community and shall consist, as far as practicable, of alternate farms (i. e., every third, fourth, or fifth farm listed on the State listing sheet) in the community. If the local committee and State committee find that the number of old farms in the community is too small to provide a reasonable representative sample, the average yield for the nearest community which the State committee finds to be most similar with respect to type of soil, topography, and productivity shall be used as the community average yield.

The county average tobacco acreage for old farms shall be the number of acres obtained by dividing the total of the 1938 tobacco acreage of all the old farms in the county by the number of such farms; provided, that if the number of old farms in any county is less than the number of new farms in the county, the county average tobacco acreage for old farms in such county shall be the county average tobacco acreage for old farms in the nearest county (as determined by the State committee) in which the total number of old farms exceeds the total number of new farms.

(b) The number of pounds determined for a farm pursuant to subsection (a) above shall be increased if the capacity of the farm for the production of tobacco as indicated by the land (taking into account the crop-rotation practices customarily carried out on the farm), labor, and equipment available for the production of tobacco on the farm in 1938, is substantially greater than the tobacco production capacity of other farms in the county for which a similar number of pounds were determined pursuant to said subsection (a), and shall be decreased if the farm's capacity for tobacco production is substantially less than that of other farms in the county for which a similar number of pounds were determined pursuant to said subsection (a).

Any adjustment pursuant to this subsection (b) shall be in such amount as the local committee finds will cause the normal marketings for the farm to reflect adequately the difference in the capacity of the farm for the production of tobacco as compared with the tobacco production capacity of other farms in the county for which a similar number of pounds were determined pursuant to subsection (a) above; provided that the adjustment shall in no event cause the normal marketings to exceed the number of pounds obtained by multiplying the community average yield by the 1938 tobacco acreage for the farm.

In appraising the land (taking into account the crop-rotation practices customarily carried out on the farm), labor, and equipment available for the production of tobacco for the purpose of determining the capacity of a farm for the production of tobacco, the local commit-

tee shall proceed in the same manner as provided in section 3 (c) of Part II with respect to old farms.

Done at Washington, D. C., this 5th day of November, 1938. Witness my hand and the seal of the Department of Agriculture.

[SEAL]

H. A. WALLACE,
Secretary.[F. R. Doc. 38-3353; Filed, November 5, 1938;
12:34 p. m.]

ORDER TERMINATING MARKETING AGREEMENT AND AMENDED LICENSE REGULATING HANDLING OF CALIFORNIA FRESH DECIDUOUS TREE FRUITS EXCEPT APPLES, AND DISCHARGING THE CONTROL COMMITTEE MEMBERS FROM SERVING AS JOINT TRUSTEES

Whereas, the Control Committee, established pursuant to the provisions of the marketing agreement executed by the Secretary of Agriculture of the United States on July 17, 1935, effective on and after July 20, 1935, and the amended license issued by the Secretary of Agriculture of the United States on July 17, 1935, effective on and after July 21, 1935, regulating the handling of California fresh deciduous tree fruits except apples, has no indebtedness and has disposed of all of its assets in accordance with the provisions of said marketing agreement and amended license;

Now, therefore, it is hereby ordered by the Secretary of Agriculture of the United States that (1) the aforesaid marketing agreement and the aforesaid amended license be, and the same hereby are, terminated, and (2) the members of the aforesaid Control Committee be, and they hereby are, discharged from further duties pursuant to or in connection with said marketing agreement and amended license.

In witness whereof, I, H. A. Wallace, Secretary of Agriculture of the United States, have executed this order and caused the official seal of the United States Department of Agriculture to be affixed hereto in the city of Washington, District of Columbia, on the 5th day of November 1938 and, pursuant to the provisions of the aforesaid marketing agreement and amended license, declare this order to be effective on and after 12:01 a. m., eastern standard time, November 8, 1938.

[SEAL]

H. A. WALLACE,
Secretary of Agriculture.[F. R. Doc. 38-3348; Filed, November 5, 1938;
12:33 p. m.]

**TITLE 10—ARMY
WAR DEPARTMENT**

**PART 62. RESERVE OFFICER'S TRAINING
CORPS**

ADMINISTRATION AND TRAINING

**SEC. 62.15¹ Eligibility to membership.—
Eligibility to membership in the Reserve**

¹ Revision.

Officer's Training Corps is limited to students at institutions in which units of such corps may be established, who are citizens of the United States, who are not less than 14 years of age, and whose bodily condition is such as to meet the physical requirements specified herein. Enrollments of students who have passed their twenty-sixth birthday will not be made in the Reserve Officers' Training Corps, except that in Medical Corps units students may be enrolled whose requirements for appointment in the Medical Reserve Corps can be fulfilled before attaining the age of thirty-five. No member of the active personnel of the Army, Navy, or Marine Corps of the United States, nor any commissioned officer of the National Guard or Naval Militia, nor Reserve officer of the military forces of the United States is eligible for membership in the Reserve Officers' Training Corps, except that a Reserve officer who is also a medical student may be admitted to a Medical Corps unit. Members of the Naval or Marine Corps Reserve are not eligible for membership in the Reserve Officers' Training Corps. The fact that an applicant is a member of the Regular Army Reserve does not make him ineligible for enrollment providing he is otherwise qualified. See Ops. J. A. G. June, 6, 1917; January 10, 1919; July 28, 1920; October 5, 1921; and October 11, 1938.

(Sec. 40, 39 Stat. 191; sec. 33, 41 Stat. 776; 10 U. S. C. 381) (Sec. 44, 39 Stat. 192; 10 U. S. C. 382.) [A. R. 145-10, May 28, 1931; Cir. No. 64, W. D., 1938.]

E. S. ADAMS,
Major General,
The Adjutant General.

[F. R. Doc. 38-3345; Filed, November 5, 1938;
9:48 a. m.]

Notices

DEPARTMENT OF AGRICULTURE

Bureau of Animal Industry.

**NOTICE UNDER PACKERS AND STOCKYARDS
ACT¹**

NOVEMBER 4, 1938.

To RAY LUM,
Vicksburg, Miss.

Notice is hereby given that after inquiry, as provided by Section 302 (b) of the Packers and Stockyards Act, 1921 (7 U. S. C. Sec. 202 (b)), it has been ascertained by me as Secretary of Agriculture of the United States that the stockyard known as Ray Lum Stockyards, at Vicksburg, State of Mississippi, is subject to the provisions of said Act.

The attention of stockyard owners, market agencies, dealers, and other persons concerned is directed to Sections 303 and 306 (7 U. S. C. Secs. 203 and 207) and other pertinent provisions of said

¹ Modifies list posted stockyards 9 CFR 13.034.

Act and the rules and regulations issued thereunder by the Secretary of Agriculture.

[SEAL] HARRY L. BROWN,
Acting Secretary of Agriculture.

[F. R. Doc. 38-3350; Filed, November 5, 1938;
12:33 p. m.]

NOTICE UNDER PACKERS AND STOCKYARDS ACT¹

NOVEMBER 4, 1938.

TO UNION LIVE STOCK
COMMISSION CO., INC.,
Scottsbluff, Nebr.

Notice is hereby given that after inquiry, as provided by Section 302 (b) of the Packers and Stockyards Act, 1921 (7 U. S. C. Sec. 202 (b)). It has been ascertained by me as Secretary of Agriculture of the United States that the stockyard known as Union Live Stock Commission Company, at Scottsbluff, State of Nebraska, is subject to the provisions of said Act.

The attention of stockyard owners, market agencies, dealers, and other persons concerned is directed to Sections 303 and 306 (7 U. S. C. Secs. 203 and 207) and other pertinent provisions of said Act and the rules and regulations issued thereunder by the Secretary of Agriculture.

[SEAL] HARRY L. BROWN,
Acting Secretary of Agriculture.

[F. R. Doc. 38-3349; Filed, November 5, 1938;
12:33 p. m.]

MEMPHIS UNION STOCK YARDS

NOTICE OF POSTING¹

NOVEMBER 4, 1938.

Whereas, in accordance with the provisions of Section 301 of Title III and Section 302 (a) and (b) of an Act of Congress entitled "An Act to regulate interstate and foreign commerce in livestock, livestock products, dairy products, poultry, poultry products, and eggs, and for other purposes," approved August 15, 1921, the Secretary of Agriculture posted the stockyard known as the Guyton Stock Yards, Memphis, Tenn., as being subject to the provisions of said Act; and

Whereas, it now appears that since the date of posting there has been a change in the operator of the stockyard posted as the Guyton Stock Yards, Memphis, Tenn., and that such stockyard is now being operated by the Owen Brothers Horse & Mule Commission Company as a part of the posted stockyard known as the Memphis Union Stock Yards, Memphis, Tenn.:

Therefore, it is ordered that the notice of the posting of the Guyton Stock Yards, Memphis, Tenn., be and hereby

¹ Modifies list posted stockyards 9 CFR 13.034.

is amended to show that the correct name of said stockyard is the Memphis Union Stock Yards, Memphis, Tenn.

[SEAL] HARRY L. BROWN,
Acting Secretary of Agriculture.

[F. R. Doc. 38-3351; Filed, November 5, 1938;
12:33 p. m.]

FEDERAL POWER COMMISSION.

[Docket No. IT-5524]

IN THE MATTER OF PENNSYLVANIA WATER AND POWER COMPANY

ORDER INSTITUTING INVESTIGATION AND SETTING DATE OF HEARING

NOVEMBER 1, 1938.

Commissioners: Clyde L. Seavey, Acting Chairman; Claude L. Draper, Basil Manly, John W. Scott.

It appearing to the Commission that:

(a) By order to show cause in the above entitled matter dated September 2, 1938, the Pennsylvania Water and Power Company (hereinafter referred to as respondent) was ordered to show cause, if any there be, why appropriate proceedings should not be instituted against said company for operating and maintaining its Holtwood Development without a license granted pursuant to the Federal Power Act, or a permit or valid existing right-of-way granted prior to June 10, 1920;

(b) On October 10, 1938, the respondent filed an answer to said order to show cause wherein it admitted that it operates and maintains for purposes of developing electric power, a dam, reservoir, power house and other works incidental thereto, across and in the Susquehanna River at Holtwood near McCall's Ferry, Pennsylvania, but denied that said Susquehanna River is a navigable water of the United States from above the Reservoir so operated to its mouth in the Chesapeake Bay, and particularly denied that it is a navigable water of the United States at the site of the Holtwood Development.

The Commission, having considered the matters set forth in the order to show cause and in the answer thereto, upon its own motion, orders that:

(A) An investigation be and is hereby instituted to determine all facts, conditions, or matters relating to the navigability of the Susquehanna River, and the authority under which the Holtwood Development is maintained and operated in said River; and whether an order of the Commission, appropriate, expedient and in the public interest should be issued to conserve and utilize the navigation and water power resources of said region.

(B) A public hearing be held on December 6, 1938, at 10:00 A. M. in the hearing room of the Commission, Hurley-Wright Building, 1800 Pennsylvania Avenue, N. W., Washington, D. C., to ascertain all facts pertaining to this investiga-

tion and to any other issues raised by the order to show cause and the answer thereto.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 38-3346; Filed, November 5, 1938;
9:49 a. m.]

FEDERAL TRADE COMMISSION.

United States of America—Before
Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 5th day of November, A. D. 1938.

Commissioners: Garland S. Ferguson, Chairman; Charles H. March, Ewin L. Davis, William A. Ayres, Robert E. Freer.

[Docket No. 3174]

IN THE MATTER OF FORD MOTOR COMPANY

ORDER APPOINTING EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress (38 Stat. 717; 15 U. S. C. A., Section 41),

It is ordered, That Robert S. Hall, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on Tuesday, November 29, 1938, at ten o'clock in the forenoon of that day (eastern standard time) in Room 921, United States Post Office Building, Detroit, Michigan.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report upon the evidence.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 38-3354; Filed, November 5, 1938;
12:36 p. m.]

RURAL ELECTRIFICATION ADMINISTRATION.

[Administrative Order No. 306]

ALLOCATION OF FUNDS FOR LOANS

NOVEMBER 3, 1938.

By virtue of the authority vested in me by the provisions of Section 4 of the Rural Electrification Act of 1936, as amended, I hereby allocate, from the sums authorized by said Act, funds for

loans for the projects and in the amounts as set forth in the following schedule:

Project Designation	Amount
Alabama R9020B1 Baldwin.....	\$65,000
Georgia R9022D1 Colquitt.....	125,000
Georgia R9034C1 Carroll.....	138,000
Georgia R9045B1 Sumter.....	282,000
Illinois R9038A1 McLean.....	1,164,000
Kansas R9008B1 Allen.....	53,000
Kentucky R9018B1 Meade.....	46,000
Kentucky R9034B1 Barren.....	184,000
Louisiana R9006B1 St. Marys.....	37,500
Minnesota R9065C1 Dakota.....	150,000
Missouri R9018C1 Texas.....	236,000
Missouri R9031B1 Mississippi.....	198,000
Nebraska R9058A1 Boone.....	226,000
Nebraska R9060A1 Hamilton.....	216,000
Nebraska R9065A1 Wayne.....	197,000
Ohio R9075C1 Williams.....	136,000
Oklahoma R9010B1 Cleveland.....	99,000
Oregon R9014B1 Umatilla.....	37,000
Pennsylvania R9017A2 Armstrong.....	43,000
Texas R9023B1 McCulloch.....	166,000
Texas R9041C1 Panola.....	36,000
Texas R9053C1 McLennan.....	46,000
Texas R9061B1 Coleman.....	145,000
Texas R9071A1 Clay.....	115,000
Wisconsin R9045G6 Chippewa.....	120,000
Wyoming R9005B1 Big Horn.....	23,920
Wyoming R9005B2 Big Horn.....	183,080
Wyoming R9012B1 Park.....	22,300

JOHN M. CARMODY,
Administrator.

[F. R. Doc. 38-3343; Filed, November 5, 1938;
9:48 a. m.]

[Administrative Order No. 307]

ALLOCATION OF FUNDS FOR LOANS

NOVEMBER 3, 1938.

By virtue of the authority vested in me by the provisions of Section 5 of the Rural Electrification Act of 1936, as amended, I hereby allocate, from the sums authorized by said Act, funds for loans for the projects and in the amounts as set forth in the following schedule:

Project Designation	Amount
Georgia R9051W1 Newton.....	\$7,000
Missouri R9019W2 Boone.....	10,000
North Dakota R9011W2 Cass.....	5,000
Ohio R9029W1 Pike.....	8,000
Ohio R9083W2 Huron.....	5,000

JOHN M. CARMODY,
Administrator.

[F. R. Doc. 38-3344; Filed, November 5, 1938;
9:48 a. m.]

SECURITIES AND EXCHANGE COMMISSION.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 4th day of November, A. D. 1938.

[File No. 1-1804]

IN THE MATTER OF THE REGISTRATION OF MILLS ALLOYS, INC., \$2 CUMULATIVE CONVERTIBLE CLASS A PREFERRED STOCK, NO PAR VALUE, AND CLASS B COMMON STOCK, NO PAR VALUE

ORDER FOR HEARING

I

It appearing to the Commission:

That Mills Alloys, Inc., a corporation, is the issuer of \$2 Cumulative Convert-

ible Class A Preferred Stock, No Par Value, and Class B Common Stock, No Par Value; and

That said Mills Alloys, Inc. registered such securities on the Los Angeles Stock Exchange, a national securities exchange, by filing on or about June 13, 1935, an application with the said Exchange and with the Commission, pursuant to Section 12 (b) of the Securities Exchange Act of 1934, as amended, and pursuant to Rule X-12B-1, as amended, formerly designated as Rule JB1, promulgated by the Commission thereunder; and

That Rule X-13A-1 promulgated pursuant to Section 13 (a) of said Securities Exchange Act of 1934, as amended, did and does require that an annual report for each issuer of a security registered on a national securities exchange shall be filed on the appropriate form prescribed therefor; and

That Rule X-13A-2 promulgated pursuant to Section 13 (a) of said Securities Exchange Act of 1934, as amended, did and does prescribe Form 10-K as the annual report form to be used for the annual reports of all corporations except those for which another form is specified and that no other form was or is specified for use by the said Mills Alloys, Inc.; and

The Commission having reason to believe:

That Mills Alloys, Inc. has failed to comply with said Section 13 (a) and said Rule X-13A-1 promulgated by the Commission thereunder in that it has failed to file its annual report for the year ended December 31, 1937, on Form 10-K, as prescribed by Rule X-13A-2 adopted by the Commission pursuant to said Section 13 (a); and

The Commission being of the opinion that pursuant to Section 19 (a) (2) of said Securities Exchange Act of 1934, as amended, a hearing should be held to determine whether said Mills Alloys, Inc. has so failed to comply with said Section 13 (a) and said Rules and Regulations promulgated by the Commission thereunder, and if so, whether it is necessary or appropriate for the protection of investors to suspend for a period not exceeding 12 months or to withdraw the registration of said \$2 Cumulative Convertible Class A Preferred Stock, No Par Value, and Class B Common Stock, No Par Value, on said Los Angeles Stock Exchange;

It is ordered, That a public hearing be held for such purpose before the officer of the Commission herein designated beginning on the 23rd day of November, 1938, at 10:00 A. M. at the Regional Office of the Securities and Exchange Commission, 650 South Spring Street, Los Angeles, California, and to continue thereafter at such times and places as said officer may determine; and

It is further ordered, That for the purpose of such proceeding, John Clarkson, an officer of the Commission be and he hereby is designated to administer oaths

and affirmations, subpoena witnesses, compel their attendance, take testimony, and require the production of any books, papers, correspondence, memoranda or other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith authorized by law.

By direction of the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 38-3347; Filed, November 5, 1938;
12:04 p. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 4th day of November A. D. 1938.

[File No. 31-155]

IN THE MATTER OF THE APPLICATION OF THE RHODE ISLAND PUBLIC SERVICE COMPANY

ORDER CONSENTING TO WITHDRAWAL OF APPLICATION FOR EXEMPTION FROM PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 PURSUANT TO REQUEST OF APPLICANT

Upon the request of the applicant, the Commission consents to the withdrawal of the application for exemption of the above-named applicant, and to that effect

It is so ordered.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 38-3355; Filed, November 7, 1938;
12:45 p. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 4th day of November A. D. 1938.

[File No. 31-157]

IN THE MATTER OF THE APPLICATION OF MASSACHUSETTS POWER AND LIGHT ASSOCIATES, NORTH BOSTON LIGHTING PROPERTIES

ORDER CONSENTING TO WITHDRAWAL OF APPLICATION FOR EXEMPTION FROM PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 PURSUANT TO REQUEST OF APPLICANT

Upon the request of the applicants, the Commission consents to the withdrawal of the application for exemption of the above-named applicants, and to that effect

It is so ordered.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 38-3356; Filed, November 7, 1938;
12:45 p. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 4th day of November A. D. 1938.

[File No. 31-160]

IN THE MATTER OF THE APPLICATION OF MASSACHUSETTS UTILITIES ASSOCIATES, MASSACHUSETTS UTILITIES ASSOCIATES COMMON VOTING TRUST

ORDER CONSENTING TO WITHDRAWAL OF APPLICATION FOR EXEMPTION FROM PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 PURSUANT TO REQUEST OF APPLICANT

Upon the request of the applicants, the Commission consents to the withdrawal of the application for exemption of the above-named applicants, and to that effect

It is so ordered.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 38-3357; Filed, November 7, 1938; 12:45 p. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 7th day of November, A. D. 1938.

[File No. 32-113]

IN THE MATTER OF BLACKSTONE VALLEY GAS AND ELECTRIC COMPANY

NOTICE OF AND ORDER FOR HEARING

An application pursuant to section 6 (b) of the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by the above-named party;

It is ordered, That a hearing on such matter be held on November 23, 1938, at 10:00 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue NW., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held.

At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered, That Charles S. Moore or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice to continue or postpone said hearing from time to time.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before November 18, 1938.

The matter concerned herewith is in regard to a proposed issuance and sale by applicant, Blackstone Valley Gas and Electric Company, a subsidiary of Eastern Utilities Associates, a registered holding company, of \$4,000,000 principal amount Mortgage and Collateral Trust Bonds, Series D, 3½%, due December 1, 1968; such issue and sale to be made by public offering through underwriters. The net proceeds of the securities proposed to be issued and sold are to be expended, or otherwise used, together with other treasury funds if and to the extent necessary, for the payment at maturity on January 1, 1939, of the applicant's First and General Mortgage Gold Bonds, 5%, due January 1, 1939, outstanding in the principal amount of \$4,045,000.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 38-3358; Filed, November 7, 1938; 12:45 p. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 7th day of November, A. D. 1938.

[File No. 32-114]

IN THE MATTER OF MADISON GAS AND ELECTRIC COMPANY

NOTICE OF AND ORDER FOR HEARING

An application pursuant to section 6 (b) of the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by the above-named party;

It is ordered, That a hearing on such matter be held on November 22, 1938, at ten o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue NW., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered, That Charles S. Lobingier or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice to continue or postpone said hearing from time to time.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before November 17, 1938.

The matter concerned herewith is in regard to the exemption from Section 6 (a) of the Public Utility Holding Company Act of 1935, of the issue and sale of \$1,000,000 First Mortgage Bonds, 4% Series due 1960 by Madison Gas and Electric Company for the reason that such issue and sale are solely for the purpose of financing the business of the Madison Gas and Electric Company and have been expressly authorized by the Public Service Commission of Wisconsin.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 38-3359; Filed, November 7, 1938; 12:45 p. m.]

